

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

PCT/EP2003/003429



509, 110

Applicant's or agent's file reference 0000053379	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/003429	International filing date (day/month/year) 02 April 2003 (02.04.2003)	Priority date (day/month/year) 05 April 2002 (05.04.2002)
International Patent Classification (IPC) or national classification and IPC A01N 37/52		
Applicant BASF AKTIENGESELLSCHAFT		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of _____ sheets.

- This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 06 October 2003 (06.10.2003)	Date of completion of this report 08 July 2004 (08.07.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/003429

I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages _____ 1-17 _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the claims:
pages _____ 1-15 _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the drawings:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1 - 15	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1 - 15	NO
Industrial applicability (IA)	Claims	1 - 15	YES
	Claims		NO

2. Citations and explanations

See Supplemental Sheet

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of:

1. Reference is made to the following documents:

D1: WO 98 53689 A (LEYENDECKER JOACHIM; SCHELBERGER
KLAUS (DE); BASF AG (DE); LORENZ) 3 December
1998 (1998-12-03)

D2: WO 99 14187 A (RHEINHEIMER JOACHIM; BASF AG
(DE); EICKEN KARL (DE); LORENZ GISELA) 25 March
1999 (1999-03-25) & EP 1 017 670 A 12 July 2000
(2000-07-12) cited in the application

2. The present application relates to synergistic
fungicidal mixtures containing a benzamidoxime derivative
of formula (I) and at least one of nine given strobilurin
derivatives.

3. Regarding Box V

3.1 Novelty (PCT Article 33(2))

The available prior art discloses no mixtures containing
as active ingredient a benzamidoxime derivative of
formula (I) and at least one of the strobilurin
derivatives (II)-(X). The subject matter of independent
claim 1 is therefore not anticipated by the cited prior
art.

3.2 Inventive step (PCT Article 33(3))

D1, which is considered to be the closest prior art,
discloses (cf. practical example 1) synergistic
fungicidal mixtures consisting of a benzamidoxime

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of:

derivative and compounds (IV), (VII) and (VIII) of the present application. The subject matter of claim 1 differs from D1 by virtue of the benzamidoxime derivative, and specifically in that it has a difluoromethoxy group instead of a trifluoromethyl group on the benzoyl ring. The problem addressed by the present invention can therefore be considered that of providing alternative synergistic fungicidal mixtures.

A person skilled in the art looking for alternative synergistic fungicidal mixtures would first investigate combinations of known fungicides with the D1 strobilurins, starting from known fungicides with a structure very similar to the benzamidoxime derivatives described in D1. He would find such structures in D2. From a combination of the benzamidoxime derivatives described in D2 (especially from compound I.20) and the D1 strobilurins a person skilled in the art would arrive at synergistic fungicidal mixtures and methods as claimed in claims 1, 2, 5-7 and 11-15 without thereby being inventive. It would likewise be obvious to combine the benzamidoxime derivatives with further strobilurins, since a similar fungicidal activity is likely to be exhibited by compounds belonging to the same fungicide family. The subject matter of claims 3, 4 and 8-10 can therefore likewise not be considered inventive.

3.3 Industrial applicability (PCT Article 33(4))

Is acknowledged for claims 1-15.

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of:

4. Further observations:

Claim 1 does not meet the requirements of PCT Article 6 because the subject matter for which protection is sought is not clearly defined. By the feature "in a synergistically effective amount" the claim attempts to define the subject matter in terms of the result to be achieved, but in so doing merely states the problem to be solved. To overcome this defect, the technical features necessary for achieving this result would have to be included in the claim (cf. claim 11).